

SENATE BILL 1537

By Beavers

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 211, to promote individual producer and shared responsibility for, and resource conservation of, electronic information technology equipment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 211, is amended by adding the following language as a new, appropriately designated part:

§ 68-211-1101.

This act may be cited as the "Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act".

§ 68-211-1102.

As used in this part, unless the context otherwise requires:

(1) "Collect" or "collection" means to physically pick up a covered device at a household or to facilitate the drop-off of a covered device at a collection site included in the manufacturer's plan, and to transport the covered device for recovery;

(2) "Consumer" means any occupant of a single detached dwelling unit or a single unit of a multiple dwelling unit (a household) who has used a covered device primarily for personal or home business use;

(3) "Covered device" means any computing, display or printing device, including a desktop or notebook computer, computer monitor, portable computer, printer and inkjet printer; but does not include a television (including a cathode ray tube or flatpanel based television), a part of a motor vehicle, a personal digital assistant (PDA), or a telephone;

(4) "Department" means the department of environment and conservation;

(5) "Manufacturer" means any person who:

(A) manufactures or manufactured covered devices under its own brand for sale;

(B) manufactures or manufactured covered devices for sale in this state without affixing a brand;

(C) resells or resold in this state covered devices produced by other suppliers under its own brand or label;

(D) imports or exports or imported or exported covered devices into the United States; however, if a company from whom an importer purchases the merchandise has a presence in the United States and/or assets, that company shall be deemed to be the manufacturer; or

(E) manufactures or manufactured covered devices, supplies or supplied them to any person or persons within a distribution network that includes wholesalers or retailers in this state, and benefits or benefited from the sale of those covered devices through that distribution network;

(6) "Manufacturer's brands" means a manufacturer's name, brand name or brand logo, and all manufacturer's names, brand names and brand logos for which the manufacturer has legal responsibility, including those names, brand names, and brand logos of companies that the manufacturer has acquired;

(7) "Person" means any individual, business entity, partnership, limited liability company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation or public authority;

(8) "Personal digital assistant" means a hand-held computing device with a screen size of four inches or less;

(9) "Recover" means to reuse, recycle, or dispose; and "recoverer" means a person or entity that reuses, recycles, or disposes;

(10) "Retail sales" means sales of products through sales outlets, via the Internet, mail order or any other means, whether or not the seller has a physical presence in this state. Sales include sales of new, used, refurbished and other products;

(11) "Retailer" means a person who owns or operates a business that sells covered devices to a consumer, including through sales outlets, catalogs or the Internet, whether or not the seller has a physical presence in this state;

(12) "Sell" or "sale" means any transfer for consideration of title including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other similar electronic means, but does not mean leases;

(13) "Telephone" means an instrument utilized by a consumer to transmit and receive voice messages by a public utility and cellular radio telephone instruments; and

(14) "Television" means any telecommunication system device that can broadcast and receive moving pictures and sound over a distance, and includes a TV tuner. Display devices that are peripheral to a computer but nevertheless contain a TV tuner are considered televisions.

§ 68-211-1103.

The provisions of this act apply to covered devices purchased and used by consumers in this state.

§ 68-211-1104.

(a) No manufacturer shall sell or offer for sale a covered device in this state unless the manufacturer has labeled the covered device before sale and has adopted and is implementing a recovery plan.

(b) No manufacturer shall sell or offer for sale any covered device in this state unless the covered device is labeled with the manufacturer's brand. The label shall be permanently affixed and readily visible.

(c) No manufacturer shall sell or offer for sale any covered device in this state unless the manufacturer has a recovery plan under which the manufacturer offers to collect from a consumer and recover each covered device that is labeled with the manufacturer's brand at no charge to the consumer.

(d)

(1) The recovery plan must offer covered device collection services that are reasonably convenient and available to consumers in each county in the state and are as convenient for the consumer as purchasing the covered device.

(2) The following is a nonexclusive list of systems that meet the requirements of this part:

(A) The manufacturer or its designee may offer a system in which the consumer can return an end-of-life covered device through the mail, including but not limited to a system in which the consumer can go online, print a pre-paid shipping label, package the product, and schedule an at-home pickup for shipment back to the manufacturer;

(B) The manufacturer or its designee may keep open and staffed one physical collection site at which consumers may return end-of-life covered devices, in a location that is geographically central to the consumers served on the following ratios:

(i) One physical collection site for every two hundred fifty thousand (250,000) people in the state; or

(ii) In each county in the state with a population of two hundred fifty thousand (250,000) people or more, an additional physical collection site for every two hundred fifty thousand (250,000) people in that county above two hundred fifty thousand (250,000) people; or

(3) The manufacturer or its designee may hold one (1) collection event each calendar year at which consumers may return end-of-life covered devices, in a location that is geographically central to the consumers served:

(A) One collection event for every fifty thousand (50,000) people in the state; or

(B) One collection event in each county with a population of fifty thousand (50,000) people or more, plus one (1) additional collection event in each such county per every fifty thousand (50,000) people in that county above fifty thousand (50,000) people.

(4) Collection services may use existing collection and consolidation infrastructure for handling covered devices, and may include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, or other suitable operations.

(e) Manufacturers must offer collection under their recovery plan at no charge to the consumer.

(f) Each manufacturer shall, as part of its recovery plan, inform consumers in this state about where and how to return and recover covered devices. Each manufacturer shall include collection and recovery information on its website, shall provide

such information to the department, and may also include such information in the covered device's packaging or accompanying the sale of the covered device.

(g) Each manufacturer shall annually report to the department on or before March 1, beginning March 1, 2009, the number, type, and weight of covered devices collected and recovered during the previous calendar year by category of covered devices (computing, display, and printing) and by brand. The report also shall include documentation verifying proper collection and recovery of such material compliant with the sound environmental management provisions under Section 9.

(h) Manufacturers shall not be liable in any way for data or other information that a consumer may leave on a covered device that is collected or recovered.

§ 68-211-1105.

(a) No retailer shall sell or offer for sale a covered device in this state unless the covered device has a proper manufacturer label and such device's manufacturer is included on the state list of manufacturers with recovery plans.

(b) Retailers shall not be liable in any way for data or other information that a consumer may leave on a covered device that is collected or recovered.

§ 68-211-1106.

(a) The department shall educate consumers about collection and recovery of covered devices.

(b) The department shall host, or designate another person to host, a website for consumers about recovery of covered devices, with information about and links to manufacturers' collection and recovery information, including their recovery plans, and information about and links to information for noncompliant and other covered devices, including information about collection events, collection sites, and community recycling programs. Inclusion on the state's website is not a determination by the state that the

manufacturer's recovery plan or actual recovery are in compliance with this act or other laws.

(c)

(1) The commissioner of environment and conservation shall administer and enforce the provisions of this part.

(2) The commissioner may:

(A) Issue orders for correction to enforce the provisions of this part and rules and regulations promulgated pursuant to this part in the manner specified in § 68-211-112 and such orders may be reviewed in the manner specified in § 68-211-113;

(B) Institute proceedings to enjoin violations of this part, rules and regulations promulgated pursuant to this part or orders issued pursuant to subsection (ii)(2) in the manner specified in § 68-211-115; and

(C) Assess civil penalties against any person who violates or fails to comply with the provisions of this part or rules and regulations promulgated pursuant to this part in the manner specified in § 68-211-117.

(d) Financial or proprietary information submitted to the department in response to an audit or inspection conducted pursuant to this act shall be exempt from public disclosure.

(e) The department shall compile the information from manufacturers and issue a report to the general assembly by June 1 each year, beginning June 1, 2009.

(f) The department may adopt such rules and regulations as are necessary to implement the provisions of this act.

(g) The department does not have the authority to assess any fees, including an advanced recycling fee, registration fee, or other fee, on consumers, manufacturers, retailers, or recoverers for collection or recovery of covered devices.

§ 68-211-1107.

(a) Consumers shall be solely responsible for any data or other information that may be on a covered device that is collected or recovered.

(b) Consumers also are encouraged to learn about proper recovery of their end-of-life covered devices by visiting the department's and manufacturers' websites.

§ 68-211-1108.

(a) All covered devices collected pursuant to this act shall be recovered in a manner that is in compliance with all applicable federal, state, and local laws and requirements.

(b) The department shall adopt by reference the Institute of Scrap Recycling Industries, Inc.'s Electronics Recycling Operating Practices as standards for recovery in an environmentally sound manner that are protective of worker health and safety.

(c) Recovery of covered devices under this act may be undertaken only by recoverers certified under the Institute of Scrap Recycling Industries, Inc.'s Recycling Industry Operating Standard.

SECTION 2. This act shall be pre-empted if a federal law or a combination of federal laws takes effect that establishes a national program for the collection and recycling of covered devices that substantially meets the intent of this act.

SECTION 3. This act shall become effective January 1, 2008, the public welfare requiring it.